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REMARKS

Claims 1-45 are currently pending in the application. By this amendment, claims 1, 18, and 24 are amended and claims 41-45 are added for the Examiner's consideration. The above amendments do not add new matter to the application and are fully supported by the specification. For example, support for the amendments is provided at pages 9-10 of the specification. Reconsideration of the rejected claims in view of the above amendments and the following remarks is respectfully requested.

Examiner Interview

Applicants appreciate the courtesies extended by the Examiner during the telephonic interview with Applicants' representative, which was conducted on June 24, 2008. During the interview, the rejection of independent claims 1, 18, and 24 under 35 U.S.C. §102(e) was discussed. The Examiner indicated that the instant amendments to the claims overcomes the issues presented in the Office Action dated April 29, 2008.

Amendments to the Claims

Applicants have amended claims 1, 18, and 24. Applicants are not conceding in this application that the originally presented claim is not patentable over the art cited by the Examiner, as the present claim amendments and cancellations are only for facilitating expeditious prosecution of the allowable subject matter noted by the examiner. Applicants respectfully reserve the right to pursue these and other claims in one or more continuations and/or divisional patent applications.

35 U.S.C. §102 Rejection

Claims 1-40 were rejected under 35 U.S.C. §102(e) for being anticipated by U.S. Patent No. 7,213,065 issued to Watt ("Watt"). To advance prosecution, Applicants have

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amended independent claims 1, 18, and 24. Applicants submit that these amendments were discussed during the Examiner interview, wherein the Examiner indicated that the instant amendments overcome the art of record.

Claim 1 recites, in pertinent part:

- ... defining a plurality of virtual clusters from a plurality of servers;
- routing a request to a virtual cluster of the plurality of virtual clusters based on predetermined criteria in order to allocate system resources;
- removing at least one of the plurality of servers from the virtual cluster when at least one of the plurality of servers is burdened;
- creating a new virtual cluster comprising only the removed at least one of the plurality of servers; and
- returning the removed at least one of the plurality of servers back to the virtual cluster when the at least one of the plurality of servers is unburdened.

Claim 18 recites, in pertinent part:

- ... allocating a plurality of servers among a plurality of virtual clusters;
- monitoring the plurality of virtual clusters for workload capacity;
- removing at least one of the plurality of servers from the plurality of virtual clusters when at least one of the plurality of servers is burdened;
- creating a new virtual cluster comprising only the removed at least one of the plurality of servers;
- returning the removed at least one of the plurality of servers back to the plurality of virtual clusters when the at least one of the plurality of servers is unburdened; and
- reassigning at least one server from one of the plurality of virtual clusters to another of the plurality of virtual clusters based on workload capacity of the at least one server in order to reallocate system resources.

Claim 24 recites, in pertinent part:

- ... define a plurality of virtual clusters from a plurality of servers;
- route a request to a virtual cluster of the plurality of virtual clusters based on predetermined criteria to allocate system resources;
- remove at least one of the plurality of servers from the virtual cluster when at least one of the plurality of servers is burdened;
- create a new virtual cluster comprising only the removed at least one of the plurality of servers; and

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return the removed at least one of the plurality of servers back to the virtual cluster when the at least one of the plurality of servers is unburdened.

Applicants submit Watt does not remove at least one of the plurality of servers from the virtual cluster when at least one of the plurality of servers is burdened or return the removed at least one of the plurality of servers back to the virtual cluster when the at least one of the plurality of servers is unburdened.

Instead, in Watt, if a server pool is underloaded, i.e., is below a minimum acceptable average load for the server pool, a server is powered off and returned to a free pool. The free pool is a server pool that contains free servers. If a server pool is overloaded, i.e., is above a maximum acceptable average load for the server pool, a server is allocated from the free pool, provisioned with an appropriate system image, and powered on to join the overloaded server pool. Therefore, Watt adds a server from a free pool to a server pool when a server pool is overloaded. (Col. 14, line 23 – col. 15, line 36; Table 2.) Watt does not remove at least one of the plurality of servers from the virtual cluster when at least one of the plurality of servers is burdened, nor does Watt return the removed at least one of the plurality of servers back to the virtual cluster when the at least one of the plurality of servers is unburdened.

Moreover, Watt does not create a new virtual cluster comprising only the removed at least one of the plurality of servers. To the contrary, in those situations where Watt removes a server from a server pool, Watt places the removed server into a free pool with all of the other free servers. This free pool is not newly created. Thus, Watt does not create a new virtual cluster comprising only the removed at least one of the plurality of servers.

Accordingly, Applicants respectfully request that the rejection over claims 1, 18, and 24 be withdrawn.

Dependent Claims

Claims 2-17, 19-23, and 25-40 are dependent claims, depending from distinguishable independent claims 1, 18, and 24, respectively. For this reason, Applicants submit that these claims are allowable for at least the reasons discussed above with respect to independent claims 1, 18, and 24. Moreover, the applied references do not disclose many of the additional features recited in these dependent claims. Accordingly, Applicants respectfully request the rejection over claims 2-17, 19-23, and 25-40 be withdrawn.

Other Matters

Claims 41-45 are added for the Examiner's consideration. The subject matter of claims 41-45 are allowable by virtue of their dependency on claim 41-45. Also, no combination of the applied references teach or suggest the features of claims 41-45.

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CONCLUSION

In view of the foregoing amendments and remarks, Applicants submit that all of the claims are patentably distinct from the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue. The Examiner is invited to contact the undersigned at the telephone number listed below, if needed. Applicants hereby make a written conditional petition for extension of time, if required. Please charge any deficiencies in fees and credit any overpayment of fees to Attorney's Deposit Account No. 09-0457.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Andrew M. Calderon', with a long horizontal flourish extending to the right.

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